IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2423 OF 2004

1. Shri Govind Vishwanath Varne)
An adult, Occ - Business, R/o.)
C.S.No.1124/5/C, 'D' Ward,)
Shukrawar Peth, Kolhapur.)

2. Dilip Govind Varne,)
An adult, Occ : Business,)
R/o. C.S.No.1124/5/C, 'D' Ward,)
Shukrawar Peth, Kolhapur.).. Petitioners
(Org.Defendants)

Vs.

1. Shri Prabhakar Vasudeo Rege,)
an adult, Occ : Service,)
R/o.C.S.No.1124/5/C, 'D' Ward,)
Shukrawar Peth, Kolhapur.)

2. Smt.Vimal Anant Rege,)
an Adult, Occ : Household,)
R/o. C.S.no.1124/5/C, 'D' Ward,)
Shukrawar Peth, Kolhapur.)

3. Ashok Anant Rege,)
an adult, Occ: Business,)
R/o.C.S.No.1124/5/C, 'D' Ward,)
Shukrawar Peth, Kolhapur.)

4. Dr.Asha Anant Rege,)
an adult,)
Occ : Medical Practitioner,)
R/o.C.S.No.1124/5/C, 'D' Ward,)
Shukrawar Peth, Kolhapur.)..Respondents
(Org.Plaintiffs)

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Shri D.S.Sawant for the Petitioners.

Shri Bipin A.Jagore for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 21st SEPTEMBER, 2004.

ORAL JUDGMENT :

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioners challenge the order dated 15th July, 2003 passed by the Additional District Judge, Kolhapur, in Regular Civil Appeal No.26 of 2001 rejecting the application filed by the petitioners in relation to the proposed amendment to the written statement.

3. It is the case of the petitioners that the proceedings for eviction of the petitioners from the suit premises were initiated by the respondents on various grounds including the ground of bonafide need of the premises for personal use of the respondents as well as on the ground of default in payment of rent. The trial Court decreed the suit merely on the ground of default in payment of rent. The said decree was sought to be challenged by way of appeal filed by the petitioners before the lower appellate Court. The respondents also filed cross objection in the said appeal challenging the dismissal of the application in relation to the other grounds on which the eviction of

the petitioners was sought for during the pendency of the appeal, and it was revealed that the respondents had let out the premises which were in their possession during the pendency of the suit and parted with the possession thereof by way of lease after the dismissal of the suit to the extent of 310 sq.ft. on the 1st floor and that therefore, the petitioners desired to amend their pleadings by incorporating the said fact which would justify the dismissal of the application for eviction of the petitioners from the suit premises on the ground of bonafide need of the premises for personal use by the respondents. The said application, however, has been dismissed by the lower appellate Court by the impugned order, on the ground of absence of evidence in support of the proposed pleadings.

4. Challenging the impugned order, the learned advocate for the petitioners submitted that the lower appellate Court has dismissed the application totally on the extraneous grounds and without considering the law applicable to the matter relating to the amendment of pleadings. The learned advocate for the respondents, however, sought to justify the impugned order while contending that the petitioners are not entitled to file subsequent pleading in view of the

provisions of law comprised under Order VIII Rule 9 of the Code of Civil Procedure, 1908.

5. Undisputedly, the pleadings which are sought to be incorporated in the written statement are in relation to the facts which are stated to have been occurred subsequent to the dismissal of the suit by the trial Court and during the pendency of the appeal filed by the petitioners. The application which was filed by the petitioners is pertaining to the fact stated to have occurred subsequent to the dismissal of the suit. Considering the law laid down by the Apex Court in **Om Prakash Gupta v. Ranbir B.Goyal,** reported in AIR 2002 SCW 278, in a case between the landlord and the tenant, either of the parties desiring to rely upon the events occurred subsequent to filing of the suit or disposal of the suit by the trial Court, cannot seek to rely upon such events unless those events are incorporated in the pleadings by amending them in accordance with the provisions of law. Considering the law laid down by the Apex Court, the lower appellate Court ought to have considered that since the proposed amendment relates to the events which have occurred subsequent to the disposal of the suit, the petitioners were, as a matter of course, entitled to seek amendment to the pleading.

6. Bare reading of the impugned order discloses that the application has been rejected solely on the ground that the petitioners have not produced any evidence to show that the respondents had let out a portion of the suit premises to the Co-operative Credit Society after disposal of the suit. It discloses total non-application of mind to the point in question. To justify the grant of an application for amendment to the pleadings, it is not necessary for the parties to lead evidence in support of the proposed pleadings. The question of leading the evidence could arise only in case the proposed amendment is allowed and the same are incorporated in the pleadings of the party. Being so, the learned advocate for the petitioners is justified in contending that the application has been rejected on the totally extraneous grounds and totally ignoring the principles of law comprised under Order VI Rule 17 of the Code of Civil Procedure.

7. While dealing with the application for amendment, the Court has to consider whether the proposed pleadings sought to be introduced by way of amendment are necessary to deal with and decide the real question in controversy and not whether there is

any evidence produced by the party to support the proposed pleadings. Question of placing evidence on record in support of such pleadings can arise only after the same are allowed to be incorporated in the pleadings already on record.

8. It was sought to be contended on behalf of the respondents that the application was filed at belated stage and nearly after the period of two years from the date of the alleged letting out of the premises by the landlords. Merely because the period of two years had elapsed from the date of letting out the premises, that by itself cannot be a ground to reject the application for amendment. Certainly, it was not filed beyond the period of three years, and therefore, no right as such had accrued in favour of the respondents which could be said to be taken away in case of grant of amendment to the written statement. Being so, the contention as regards the filing of an application at belated stage is devoid of substance. It was held in **M/s.Ganesh Trading Co. v. Moji Ram,** reported in AIR 1978 SC 484 that the provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the otherside so that it may be met, so as to enable the Court to determine what is really at issue between parties, and

to prevent deviation from the course which the litigation on particular cause of action must take. Considering the same, the Apex Court in **Harcharan v. State of Haryana,** reported in AIR 1983 SC 43 had disapproved the rejection of amendment only on the ground of delay.

9. For the reasons stated above, the impugned order cannot be sustained and is liable to be quashed and set aside, and the application for amendment to the written statement filed by the petitioners is to be allowed. Accordingly, the petition succeeds. The impugned order dated 15th July, 2003 is hereby quashed and set aside and the application for amendment to the written statement filed by the petitioners on 12th June, 2003 is hereby allowed. Rule is accordingly made absolute in above terms with no order as to costs.